

# Exhibit

3



**Joel B. Rothman**

Board Certified in Intellectual Property Law

Direct: 561.404.4335

joel.rothman@sriplaw.com

Admitted to Practice

Florida, New York, Georgia  
and the Federal Courts of

New York

Florida

Colorado

Texas

Arkansas

Michigan

W.D. Tennessee

Washington DC

July 30, 2018

**VIA FEDEX and EMAIL: eleadsales@eleadcrm.com**

Mr. David Penney  
Data Software Services, LLC dba ELEAD1ONE  
4001 Coleman Road  
Valdosta, GA 31602

**Re: Tom Hussey Photography, LLC v. Data Software Services, LLC dba  
ELEAD1ONE  
Our File: 00351-0007**

Dear Mr. Penney,

We write on behalf of our client Tom Hussey Photography, LLC, a photographer, for purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Please provide this letter to your general liability insurance carriers or other providers of insurance that may cover this claim.

*Tom Hussey Photography, LLC ("THP")*

Our client is an experienced professional photographer who makes a living from photography. Tom Hussey is TOM HUSSEY PHOTOGRAPHY, LLC's principal photographer and its founder. Hussey is an American photographer specializing in commercial advertising and lifestyle photography. He graduated from Southern Methodist University in 1987, where he earned a Bachelor of Fine Arts in Film Production and a minor in Photography, carried out postgraduate e acclaimed School of Photographic Arts & Sciences at Rochester Institute of Technology and earned his Master of Fine Arts degree in Photography and Museum Practices, with an emphasis in Photographic Conservation.

Hussey has worked on accounts for a diverse range of clients on a local, national, and international level. In 2010, his "Reflections" campaign for the pharmaceutical drug company Novartis's Exelon patch won a Gold Addy Award from the American Advertising Federation and was featured in Communication Arts 2010 Photography

Mr. David Penney  
Data Software Services dba ELEAD1ONE  
July 30, 2018  
Page 2

Annual. In September 2011, Hussey was the only American to be named in the top 10 of Adweek's top 100 (out of more than 2,760) illustrator, graphic artist, art director, design shop, photographer and student portfolios. In addition to his commercial shooting, Hussey has taught photography on the college level at the Rochester Institute of Technology in New York and Texas A&M University-Commerce and worked in the Conservation Laboratory at the International Museum of Photography at George Eastman House.

THP retains all copyrights to its photographs. THP licenses its copyrighted Works, such as the one in this case, for commercial use.

In 2013, THP created the image entitled "P-102" hereinafter referred to as the "Work". The Work at issue is shown below.



Mr. David Penney  
Data Software Services dba ELEAD1ONE  
July 30, 2018  
Page 3

THP registered the Work with the Register of Copyrights on December 16, 2013 and was assigned the registration number VAu 1-156-778, a copy of which is enclosed.

*Infringement by Data Software Services, LLC dba ELEAD1ONE ("ELEAD1ONE")*  
The infringement at issue was identified on September 25, 2017. We have enclosed contemporaneous evidence of the infringement by ELEAD1ONE.

You have employed our client's image in at least the manner indicated in the evidence attached. Your unauthorized use commenced on at least the date indicated above. You are fully aware that the Work you used is our client's Work. No one from your company ever sought a license from our client to use the image for any purpose.

You have copied, displayed and distributed our client's image without permission, license or consent. The use of a creator's photographic image without written consent or license violates the United States Code, Title 17, and The Copyright Act. The Copyright Act provides for entry of an injunction directing removal of the offending materials pending litigation. This letter shall serve as formal notice that you immediately cease and desist all unauthorized uses of our client's image. Any such further uses shall be at your peril.

If you possess a contract, license, agreement or writing on which you will rely for authorization of your use of our client's image, please provide us with this evidence so we may avoid further controversy or litigation. Otherwise, we will be forced to assume that your use violated the law.

#### *Damages*

Copyright law provides several different elements of compensation to THP when a work is infringed or altered. Section 504 permits THP to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages," or statutory damages of up to \$150,000 per work infringed. THP can present both damages theories to the jury and select the higher award any time prior to entry of judgment.

Academic studies have demonstrated that the use of good quality photographs more effectively market and advertise products and drive sales. THP's photographs are of the highest quality. THP's photographs are also scarce since it is one of the only sources of such quality photographs.

THP's damages are not limited to what it would have agreed to license the Work for prior to the infringement. Rather, THP's actual damages will be measured by the fair

Mr. David Penney  
Data Software Services dba ELEAD1ONE  
July 30, 2018  
Page 4

market value of the photograph considering ELEAD1ONE's use to sell and promote its business. THP's actual damages must be measured in light of ELEAD1ONE's use of THP's high quality and unique photograph.

This is consistent with federal courts' approach to broadly construing the term "actual damages" to favor victims of infringement. See, e.g., *Davis v. Gap, Inc.*, 246 F.3d 152, 164 (2d Cir. 2001). The fair market value approach for calculating damages is an accepted approach to valuing the defendants' uses of photographs. See *Leonard v. Stemtech Int'l, Inc.*, Nos. 15-3198, 15-3247, 2016 U.S. App. LEXIS 15565 (3d Cir. Aug. 24, 2016). In addition, THP can offer evidence of the actual cost to take the photograph infringed on a time and materials basis.

Section 504 of the Copyright Act permits THP to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages." Therefore, THP will also be entitled to ELEAD1ONE's profits from the infringement, based upon the revenue ELEAD1ONE earned in connection with the use of THP's photograph.

Alternatively, THP could seek statutory damages for infringement in an amount of up to \$30,000 per work infringed. There is also the possibility that a judge or jury could determine that ELEAD1ONE's infringement was willful. If ELEAD1ONE's infringement was shown to be willful, the statutory damage award would increase to an amount up to \$150,000 per work infringed.

#### *Demand*

In order to determine how to proceed, please provide us with information and documents showing:

1. the full nature and extent of the use of our client's image, in any and all formats;
2. representative copies in any and all tangible form and media in which our client's image was incorporated or employed; and
3. the source of the image;

Upon receipt of this information we will consider and determine an appropriate amount of compensation required to be paid to our client in compensation.

Please carefully consider this letter and the associated exhibits and provide them to your attorneys and insurance carriers. If we do not receive a response from you or a

Mr. David Penney  
Data Software Services dba ELEAD1ONE  
July 30, 2018  
Page 5

representative by August 13, 2018, we will take further steps to protect our client's rights. We look forward to your prompt response.

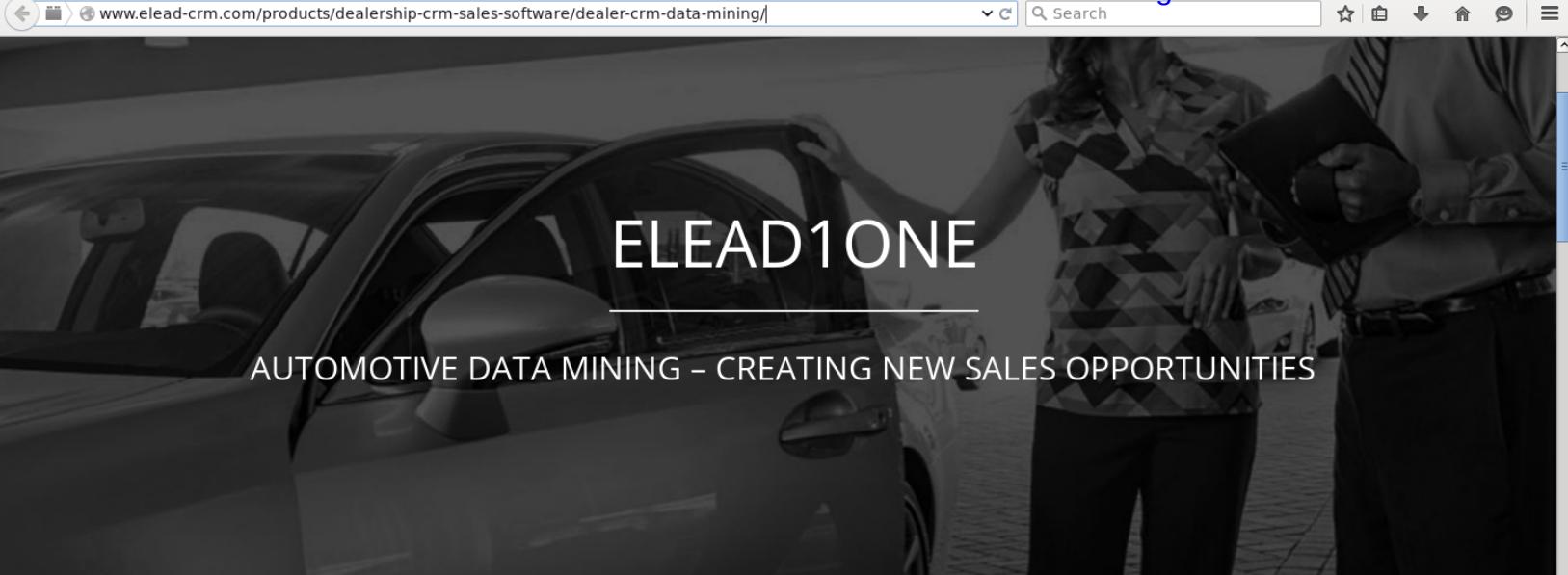
Sincerely,

**Schneider Rothman Intellectual Property Law Group, PLLC**



Joel B. Rothman  
Board Certified in Intellectual Property Law

JBR/jcj  
Enclosures



# ELEAD1ONE

## AUTOMOTIVE DATA MINING – CREATING NEW SALES OPPORTUNITIES

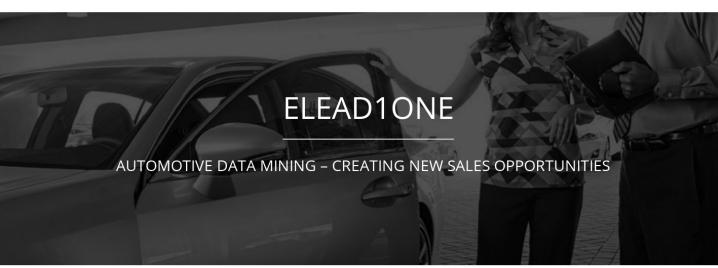
### Automotive Data Mining – Creating New Sales Opportunities

#### Xchange TradeUp Program

Take your service marketing to the next level with state-of-the-art ELEAD1ONE Xchange data mining technology. Mine the service drive for sales opportunities with vehicle exchange alerts on equity and lease opportunities real time from the DMS.

Modified: 26 Sep 2017 | Screenshot: 26 Sep 2017 01:52:53 | Display Size: 1702x600px





### Automotive Data Mining – Creating New Sales Opportunities

#### Xchange TradeUp Program

Take your service marketing to the next level with state-of-the-art ELEAD1ONE Xchange data mining technology. Mine the service drive for sales opportunities with vehicle exchange alerts on equity and lease opportunities real time from the DMS.

Individualized, intelligent service-marketing campaigns are essential to retaining customers and leveraging the highest customer value for dealerships. This service-marketing program increase sales and profits by targeting customers in equity, or those at the end of term, lease or warranty.

Close X



- Open RO Dashboard with Customized Alert Notifications
- Pre-appointment Confirmation Call From the Nation's #1 Automotive-only Customer Contact Center
- In-dealership Vehicle Exchange Process Training Available On-demand
- Custom and Brand-specific Point-of-Sale Material Available: Retractable Banners, RO Jackers, and Hang Tags

Let us prove how you can improve customer loyalty, value and profitability with the auto industry's most acclaimed car dealer data mining solutions.



Dealers who want to turn their current customers into loyal, repeat business utilize GoldDigger data mining technology to target in-market opportunities with smart, customer-centric campaigns that generate the highest return on marketing investments. Armed with DMS data, OEM incentives, book values and other third-party data, GoldDigger leverages a multi-channel direct marketing program that produces the industry's highest response rate from ready-to-buy opportunities, including positive equity, end of term/lease, lower payment, delivery and defector.

ELEAD Virtual BDC blends seamlessly with GoldDigger to deliver the right message at the right time to the right person for unparalleled increases in appointment generation, sales opportunities, customer retention and profitability.

- Improve Customer Experience, Retention and Loyalty
- Responds Quickly to OEM Programs
- Accelerates the Customer Buying Cycle
- Increase Market Share and CSI
- Dealers Acquire Highly Desired Pre-owned Vehicles at a Much Lower Cost
- Detailed, Comprehensive ROI Reporting
- Highly Skilled Appointment Specialists Drive Leads Right to Your Showroom

[REQUEST A DEMO](#)



ELEAD1ONE CRM



MOBILE SALES APP



INTERNET LEAD MANAGEMENT



DRIVING SOLUTION



INVENTORY MANAGEMENT



MOBILE RETAIL

#### CONTACT SALES

4001 Coleman Road North Valdosta, Georgia 31602

sales@elead1one.com

Sales: (855) 983-9470 - Support: (877) 859-0195

Rate Us on DrivingSales

#### CONTACT SALES

\*First Name \*Last Name

\*Phone Number

\*Email

Dealership Name

**SUBMIT**



Modified: 10 Aug 2016 Screenshot: 26 Sep 2017 01:52:31